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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,236	09/17/2003	Sandra M. Maclean	11842/US/2	5239

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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09/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/664,236

Applicant(s)

MACLEAN ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/8/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 8 June 2007 have been fully considered but they are not persuasive.

In response to applicant's argument that the claimed specimen pan is for receiving human tissue and the container is for holding fetal remains, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The pan and container disclosed by Schumacher are fully capable of receiving human tissue and holding fetal remains, respectively.

In response to the applicant's argument that the absorbent containing pouch of Schumacher does not fulfill the claimed limitations, it is noted that Schumacher further discloses a pad 52 that has a top surface that is absorbent.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Gordon teaches a specimen pan that allows for disposal of waste with a reduced risk of touching the

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waste. It would therefore be obvious to modify the kit of Schumacher to include a specimen pan such as that taught by Gordon.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.]

Claims 1 and 25-30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schumacher (4,917,238).

Assuming the limitation "miscarriage" is given little patentable weight, Schumacher discloses a kit 10 for cleaning up body waste such as vomit, blood, feces and the like (column 1, lines 9-12; column 2, lines 6-7; figure 1) comprising a pad 52 having an absorbent surface (column 2, lines 45-47); a disposable absorbent towel 50 and sanitary napkin 51 (column 2, lines 45-47); disposable plastic gloves 57, 58 (column 2, lines 52-53); scoop/specimen pan 80; and container 64. The specimen pan 80 is fully capable of receiving human tissue, and the container 64 is fully capable of holding fetal remains.

Alternatively, assuming the limitation "miscarriage kit" is given patentable weight and is consistent with its plain ordinary meaning of expulsion of a fetus from the womb before it is able to survive independently (see Oxford online dictionary), regarding claim 1 Schumacher discloses a waste cleanup kit 10 for cleaning up body waste such as vomit, blood, feces and the like (column 1, lines 9-12; column 2, lines 6-7; figure 1) that is thus capable of being used as a miscarriage kit since the elements of the kit are fully capable of being used to clean up after a miscarriage.

With respect to claim 25, the container 64 is spill-proof and sanitary since it has a cap 68 that confines the liquids (column 3, line 20).

With respect to claims 26-30, the kit further comprises label/list 63 (column 2, lines 64-68); two plastic bags 53, 54 (column 4, lines 47-48); germicidal hand wipe 7; and scraper 90 (column 3, lines 25 and 33-34).

Claims 2-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schumacher (4,917,238) in view of Gordon (6,434,762).

Schumacher discloses a kit with a specimen pan 80 as disclosed above with respect to claim 1. Schumacher *does not expressly disclose* the pan is configured to fit inside the rim of a toilet. Gordon discloses a stool/waste collecting apparatus 10 secured to a toilet seat (column 2, lines 28-31) and having a receptacle/specimen pan 14 which fits inside the rim of a toilet (column 2, lines 46-55; figures 1-3) for depositing bodily waste without fear of touching the sample (column 3, lines 31-41). One would be motivated to modify the kit of Schumacher with the specimen pad of Gordon to improve

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the anti-contamination of the system since both references disclose apparatus to dispose of bodily waste. Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to modify the kit, thus providing a specimen pan to fit inside a toilet rim.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CNA
cla
August 22, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

